

We offer the following comments on the status of video competition:

1. Paragraph 5. Head to Head Competition.

Status in Alaska's Urban Areas: There are three major sources for multiple channel video programming in urban Alaska, DirecTV, DISH Network, and the incumbent cable operator. We estimate 75% of the single family homes in the urban areas of Alaska can access at least two of these sources and 65% can access all three based on historical no line of sight rates to the services. The low elevation angle to DirecTV (10 degrees in Anchorage) and DISH Network (16 degrees) means many single family homes have no line of sight to the respective satellites. The use of multiple satellites to provide the service further complicates line of sight issues.

Status in Alaska's Rural Areas: There are only two sources for multiple channel video service in the rural portions of Alaska (excluding SE Alaska), the incumbent cable provider and DISH Network. Most rural areas of Alaska are not served well by DirecTV due to low elevation angles and the large expense of equipment. The exception being Southeast Alaska where DirecTV supports most rural customers through its home service network.

2. Paragraph 7

Bundling is a large impediment to competition, especially in rural areas where the incumbent cable operator offering the bundle, is a recipient of significant revenue from the Universal Service Fund or USDA for the services they offer. In both urban and rural areas, a customer is discouraged from getting their television programming from a DBS provider because the incumbent cable provider charges a premium for broadband internet service separated from the bundle. In rural areas, even if a DBS provider offers a companion satellite broadband service, it is not competitive with the incumbent cable operator's cable modem service due to the indirect effect of USF broadband subsidies for schools, libraries, and health care, and USDA broadband grants neither of which are available to direct to home satellite broadband providers. We recommend that any internet service provider that receives Universal Service subsidies or USDA grants for broadband in community be barred from bundling services/charging a premium for buying only one piece of a bundle.

3. Paragraph 8

In the Alaska market, customers tend to follow promotions, however, promotions do not seem to have had an effect on cable penetration rates. In the quarterly report for Q3/2008 GCI cable showed subscriber growth consistent with the build out of their network and prevailing cable penetration rates. In the year following the launch of the Anchorage local channels by DISH Network, GCI showed subscriber acquisitions that were noticeably less than anticipated by the build out of their network that year.

4. Paragraph 9

The current FCC rules on ownership of cable in MDU's establishes a clear demarcation between

facilities owned by the MDU property and those owned by the incumbent cable operator. They also establish procedures for the property to notify the incumbent operator and to purchase some portion of the incumbent operator's cable plant. However, the Commission's rules presume the incumbent provider will negotiate in good faith and the two parties will come to a purchase agreement. In the only situation, where we have taken over from an incumbent provider in Hawaii, the property and Time Warner Cable could not arrive at a purchase agreement and Time Warner removed their cable plant from the property. Time Warner valued the installed cable plant at 5 times its replacement value, an action clearly taken to intimidate the property owners and make switching to an alternative provider an expensive and painful process. Incumbent cable providers must be constrained in the methods they use to value their cable plants. While the CFO may want to use net present value of an income stream, this can result in a significantly over-valuing just a little bit of cable.

#### 5. Paragraph 12

In Hawaii, Time Warner Cable has created a cable only network called OC-16. This network is very popular in Hawaii and a significant issue in competition, especially as it has exclusive rights to University of Hawaii sports programming. Its value as a channel far exceeds many of the broadcast networks in Hawaii. Consequently, anyone who wants OC-16 will never consider DBS as an MPVD alternative.

#### 6. Paragraph 18

The packaging of programming and black out rules promulgated by MLB create frustration among subscribers to these packages located in Alaska and Hawaii. Specifically neither Alaska nor Hawaii has a MLB franchise, but MLB teams are allowed to claim certain areas as part of their home market. The Seattle Mariners claim Anchorage and Honolulu. Honolulu is also claimed as a home market by Los Angeles, San Francisco, Oakland, and Anaheim. Consequently, home games for these teams are regularly blacked out in Honolulu from the MLB package. Even if the exclusivity of MLB to DirecTV goes away in the future, the monopoly power being exercised by MLB is still an egregious abuse of one's copyright since the customers of MLB Extra Innings believe they have bought the right to view the game in their own home in a city far removed from the stadium.

#### 7. Paragraph 21

See comments on paragraph 12.

#### 8. Paragraph 24

We have no specific data on subscriber numbers to cable, satellite, and IPTV providers in Alaska we do know that like elsewhere in the country, in rural areas without access to cable infrastructure, DBS has quite high market penetration rates. In our earlier comment on promotions and their effect on competition, it was our perception there seemed to have very little effect on cable. Further evidence of the lack of competition in the Alaska MPVD market can be seen in the table below comparing the

COMCAST cable offering in Nashville, TN, to that of GCI Cable in Anchorage.

Comcast GCI

Television Programming ~120 ch:     \$55.75                     \$69.99

Broadband (12 mbs download):   \$42.95 (12 mbs)                     \$99.99 (10 mbs )

Telephone                     \$39.95                     \$18.99 (Local only no long distance)

Comcast telephone service includes all calling features and unlimited nationwide long distance. GCI bills long distance at \$.14 per minute intrastate and \$.06 for interstate calls.

When comparing the GCI cable rates to both DirecTV and DISH Network, there is nearly an \$18 per month price premium paid for cable in the Alaska market. We can conclude that DBS has not had much effect controlling prices. The competitiveness of DirecTV is hampered by a large antenna size and low elevations angles, while the competitiveness of DISH Network is hampered by program offerings, inconsistent promotions, multiple antennas, and low elevation angles.

DirecTV uses a 1.2m antenna for its primary programming services in Alaska and Hawaii. If Spanish language programming is needed, a second 1.2m antenna is used. The programming packages in both states are the same as DirecTV's packages nationwide. The promotions offered by DirecTV are the same as those offered in other states, but in Alaska are limited to residents of the highway system in south central and interior Alaska. In southeast Alaska the promotions are available to most residents.

In Alaska DISH Network needs two .76m antennas to receive the basic programming service. In Hawaii, DISH has fielded a .76m dual feed antenna that now receives service off the primary DISH Network satellites. This dual feed antenna is installed as part of the Hawaii promotions but customers pay a \$5 per month surcharge over other markets. HD services offered by DISH Network in Alaska and Hawaii are not the same as in 48 states and requires the addition of another .76m antenna to receive spot beam service from a satellite that will go into service at the 129 degree orbital slot.

DirecTV and DISH Network have no companion broadband offers in Alaska and Hawaii. This is of particular note in the satellite broadband area given the DBS strength in rural areas. However Wild Blue satellites do not serve Alaska and Hawaii. Independently, HughesNet and Starband are available in both states, but at prices substantially greater than the other states. (For some reason the HughesNet web site contains a note on the home page that Hawaii and Alaska are excluded. We don't know why this note is there, but it leads to customer confusion.)

Alaska and Hawaii in large measure receive DBS services due to the geographic service rules adopted by the Commission in 1996. However, these rules are woefully inadequate in today's world since less than 1/3 of the satellite capacity used to provide DBS service to the United States is subject to them. The use of FSS satellite resources in both Ku and Ka bands, and BSS resources assigned to foreign providers far overshadows the national capacity in the original orbital slots at 101, 110, and 119. Alaska and Hawaii have access to the HD services only due to the good graces of the DBS providers and their satellite suppliers. We certainly thank them for this, but believe some additional level of protection is needed to insure future services are not excluded. It has taken a

continuing effort by Microcom and the State of Hawaii to insure some level of DBS service to the 49th and 50th states and we believe the DBS providers now remember us when it comes time to make engineering and business decisions. Nevertheless we would feel more comfortable in the future if the geographic service rules evolved from applying to satellites and began applying to service offerings. In addition, the test of meeting geographic service rules should be an affirmative action by the DBS providers rather than a negative action by consumers. By the time the negative action moves forward, it is too late to do anything for several years.

We are also concerned about how the Commission assigns the new capacity available for DBS use. The Commission in the past has seemed intent on creating new competitors in the broadcast satellite market. We think this ignores the basic strategic problem that both DirecTV and DISH Network face. With core national BSS capacity limited to 96 transponders and regional satellites at 61.5 and 148, the 2 DBS providers have less raw channel capacity serving the country than an MSO operating an 870 MHz cable system has in a single DMA. Alaska and Hawaii have always suffered because of the gerrymandering of the DBS spectrum during the initial auctions. Even after the consolidation of other services into DirecTV and DISH Network, splitting of programming packages between multiple satellites coupled with low on the ground energy are significant factors that have limited the effectiveness of DBS as a competitor to cable in Alaska and Hawaii. To award any new DBS capacity to new providers will do nothing to improve the competitiveness.

#### 9. Paragraph 77

We don't view internet based video as a viable competitor in most of Alaska due the internet services available to most Alaskans. In the current stimulus debate, Congress is considering raising the threshold for broadband to an upload speed of 1 mbs and a download of 5 mbs. In Anchorage you cannot buy that speed from a local DSL provider and the cable provider only reaches that speed in the highest tier package.